



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR94-553

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28155.

The Texas Department of Transportation (the "department") has received a request for information relating to the Lancer Program. Specifically, the requestor seeks:

1. The 1991, 1992, 1993, and 1994 Contracts between Texas Department of Transportation and Texas Traffic Institute concerning the Lancer Program.
2. All correspondence in 1991, 1992, 1993, and 1994 between Texas Department of Transportation and Texas Traffic Institute concerning the Lancer Program.

You have submitted the requested information to us for review and claim that section 552.103(a) of the Government Code excepts it from required public disclosure.

Section 552.103(a) of the Government Code excepts from required public disclosure information

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state

or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5; 511 (1988) at 3.

You advise us that the requestor has filed a "Notice of Claim" with the department under the Texas Tort Claims Act. Having examined the requestor's notice of claim and original complaint, we agree with your assessment that the submitted information relates to the pending litigation. Accordingly, we conclude that the department may withhold the requested information under section 552.103(a) of the Government Code.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

¹In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Ref.: ID# 28155

Enclosures: Submitted documents

cc: Mr. Jefferey L. Clark
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(w/o enclosures)